



POINTS & AUTHORITIES, et al.

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POINTS & AUTHORITIES, et al.
SERVICES
THE LEGAL COMMUNITY

MEMORANDUM
OF
POINTS & AUTHORITIES, et al.
IN SUPPORT OF YOUR
LAW CLERK NEEDS

Congressman John D. Dingell
Ranking Member of the
HOUSE COMMITTEE ON ENERGY & COMMERCE
2125 Rayburn House Office Building
Room 2328
Washington, D.C. 20515

August 10, 2001

Re: Northeast Securities, Inc. vs. Quest Capital Strategies, Inc., et al.
NASD Case No. 98-00090

Re: Clemmons vs. Quest Capital Strategies, Inc.
NASD Case No. 00-04454

Dear Congressman Dingell:

This office is the NASD arbitration representative for Respondent **QUEST CAPITAL STRATEGIES, INC.** in both the above-captioned cases. I write to you to inform you of an issue which no doubt is of importance to you as the ranking member of the House Committee on Energy & Commerce - *arbitrator bias and misconduct in the NASD arbitration forum*, and a failure of procedural mechanisms available to remove biased arbitrators once the misconduct comes to light.

Attached you will find a copy of my "EMERGENCY PETITION TO THE DIRECTOR [of Arbitration] TO INTERVENE AND TO **REMOVE TWO ARBITRATORS FROM THE PANEL FOR CAUSE OF MISCONDUCT & BIAS**" which I filed on behalf of QUEST CAPITAL in the above-referenced Northeast arbitration. The NASD has not yet completed their review of this.

You will also notice that I attached a copy of another such Petition in the above-referenced Clemmons arbitration based on the

fact that the Arbitrator is personally acquainted with the Claimant's (public customer's) counsel and is a member of a public customers oriented bar association along with the Claimant's counsel. The Arbitrator in Clemmons refused to voluntarily remove himself, and the NASD has so far refused to act on my Petition.

The incidents of hostility, anger, impatience and profanities levied against QUEST CAPITAL by two of the Arbitrators in the Northeast case, as cited in my Petition, are about as bad as one can imagine. The Panel has a mandatory duty to ensure that a "fundamentally fair hearing" occurs through the NASD arbitration process. Their absolute refusal to allow evidence and testimony material to the defense was misconduct of the most prejudicial nature. Their angry, hostile shouts and threats against myself and against QUEST CAPITAL are simply intolerable and inimical to any attempt at receiving a fair and unbiased hearing.

The Northeast Panel's unabashed admission that they eliminated the defense's case presentation simply because they were frustrated with the length of plaintiff's case presentation and did not "need" to listen to any more evidence, is pure arrogance of the type that my client escaped when starting his life over in America away from the due process and human rights violations of a corrupt communist judiciary. This is not the lesson we need to teach either public customers or industry professionals who are forced without any alternative to submit to NASD arbitration by contract.

Without agreeing to submit all disputes to the jurisdiction of the NASD Dispute Resolution office, public customers' accounts cannot be opened (the clearing firms will not accept a non-signing customer's order), stock brokers cannot gain employment in the industry with any securities firm, and even the broker dealer firms themselves will not be licensed by the NASD to trade securities on behalf of customers unless they include an Arbitration Clause in all their New Account Agreements with the customers.

In fact, according to **NASD Code of Arbitration Procedure § 10100:**

"It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110^{1/} for a member or a person associated with a member to: (a) fail to submit a dispute for arbitration under NASD Code of Arbitration Procedure as required by that Code."

^{1/} NASD Conduct Rule 2110 states that "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

According to **NASD Code of Arbitration Procedure § 10201**, which applies to the Northeast arbitration:

"Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series *between or among members and/or associated persons*, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, *shall be arbitrated under this Code.*"

And according to **NASD Code of Arbitration Procedure § 10301**, which arguably applies to the Clemmons arbitration:

"Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series *between a customer and a member and/or associated person* arising in connection with the business of such member or in connection with the activities of such associated persons *shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer.*"

What could be more important than to provide equal time and a fair, neutral hearing during the arbitration process to both sides of a legal conflict especially when their is a *mandatory duty* to submit all disputes to the NASD, and a member's failure to do so is sanctionable, license revocable, unjust and inequitable conduct according to **NASD Code § 10100**?

In effect, the NASD monopolizes and forces its dispute resolution forum over all who are involved in trading securities. Rather than ensuring appropriate due process protection to all participants who are *forced* into its dispute resolution system, the NASD takes the opposite approach. In a great twist of irony, the NASD actually ignores or declines to act in its administrative capacity when requests to *remedy* complaints of arbitrator bias or misconduct are made, and instead compels the victim to remain, stand trial and suffer an adverse award before a biased Panel.

The NASD then requires the aggrieved party to rush into court to stay the proceedings or to vacate the tainted ruling because its forum rules do not provide or allow for the removal of biased arbitrators once they have been selected to sit on a Panel! But the NASD will utilize its administrative capacity to suspend the license of anyone who fails to pay or adhere to the terms of an admittedly biased award. (Pursuant to **NASD Code § 10100**, "*It may be deemed conduct inconsistent with just and equitable principles*")

August 10, 2001
Page 4

of trade and a violation of Rule 2110 for a member or a person associated with a member to: ... (c) fail to honor an award.").

So it traps participants in its arbitration system, only to cast them out to the courts if they dare complain of unfairness. But it then reels them back into the trap for punishment no matter how unfair a Panel may have behaved or ruled because of the severely limited basis upon which to vacate an arbitration award. Somehow the virtue of justice and equity espoused in **Article XII, § 1 of the NASD By-Laws** has been lost in the NASD's maze of indifference to the constitutional violations of procedural and substantive due process that it has created and continues to perpetuate.


But isn't this the way that all monopolies of captured audiences act?

Congressman Dingell, after reading the July 2001 issue of "On Wall Street," the bias and misconduct in my Northeast arbitration seem even more egregious than in the Stitz case you became involved with. And the failure of the Arbitrator in my Clemmons arbitration to disclose his affiliations prior to the ranking procedure almost guaranteed partiality without an effective review process.

The Panelists who committed the misconduct and who made the comments I quote in my Petitions cannot deny the citations to the record. I am quite willing to testify under oath to the truth and accuracy of all the comments I quoted in both of the Emergency Petitions. Even the Panelists themselves will be hard pressed to deny their own comments of partiality and bias.

Please contact me at my Woodland Hills office if you have any suggestions or comments to the predicaments raised in my Petitions. I truly appreciate the time you have taken to review this material.

Best Regards,
POINTS & AUTHORITIES, et al.


RICHARD C. PALI
Arbitration Representative
on behalf of **QUEST CAPITAL**

cc: **Mr. Robert R. Glauber**
CEO & President of NASD Regulation, Inc.
Ms. Linda D. Feinberg
President of NASD Dispute Resolution, Inc.
Mr. George H. Friedman
Director of Arbitration of NASD Dispute Resolution, Inc.

Binder Enclosure



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MEMORANDUM
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IN SUPPORT OF YOUR
LAW CLERK NEEDS

Mr. George H. Friedman
Director of Arbitrations
NASD Regulation, Inc.
Office of Dispute Resolution
125 Broad Street, 36th Floor
New York, New York 10004

July 16, 2001

Re: NASD-DR Case No. 00-04454
RUTH CLEMMONS and PAUL CLEMMONS vs. QUEST CAPITAL
STRATEGIES, INC.; and MATTHEW MIKESCH.

PETITION TO THE DIRECTOR TO INTERVENE AND REMOVE
ARBITRATOR FOR POSSIBLE BIAS
[under NASD Code of Arbitration Procedure ("NASD CODE")
§§ 10308, 10312 & 10313]

Dear Mr. Director:

This office is the arbitration representative for Respondent **QUEST CAPITAL STRATEGIES, INC.** in the above-captioned case. Claimants Ruth and Paul Clemmons are represented by Mr. Stuart R. Berkowitz, Esq. of the firm Platke & Berkowitz, L.L.P.

The case is administrated by Mr. Edward T. Anderson, Esq. out of District 8's Chicago Office. The arbitrator selected for this case is Mr. John J. Miller, Esq.

By way of written Motion dated May 3, 2001, QUEST CAPITAL requested that Mr. Miller recuse himself for possible bias he may feel in favor of the claimants due to his membership in the **Public Investors Arbitration Bar Association (PIABA)**.

The original "Arbitrator Disclosure Report" transmitted to the parties on **January 29, 2001** fails to disclose this fact regarding Mr. Miller. (Please see **EXHIBIT "A"**.)

Had this been listed on Mr. Miller's background, as Respondent QUEST CAPITAL's representative, I never would have officially ranked him as my #1 choice on the "Arbitrator Ranking Form" that I faxed to Mr. Anderson on **February 19, 2001**. (Please see **EXHIBIT "B"**.)

I had "struck" three other arbitrators, and would have simply "struck" Mr. Miller as well, leaving as the only other eligible arbitrator remaining on the list, Ms. Patricia W. Bottoms. She was my #2 pick on the "Ranking Form."

Subsequently, on **April 19, 2001** the NASD sent notice of Mr. Miller's "Disclosure Checklist, which reveals his membership in PIABA. (Please see **EXHIBIT "C"**.)

Thus, on **May 3, 2001** I filed a written "Challenge" to Mr. Miller with the NASD. (Please see **EXHIBIT "D"**.) On **May 8, 2001** Mr. Anderson stated that the NASD was deferring the decision to Arbitrator Miller himself.

The Initial Prehearing Conference was scheduled for **May 8, 2001**. Mr. Miller did not render a decision on the recusal issue when I raised it orally during the May 8th Initial Prehearing Conference, choosing instead to take the recusal issue under submission pending his review of my written "Challenge."

By way of a **May 8, 2001** Ruling, Mr. Miller "*declined ... [to] voluntarily withdraw from the panel.*" Notice of this decision was sent to Respondent QUEST CAPITAL on **July 2, 2001** (Please see **EXHIBIT "E"**.)

QUEST CAPITAL can not accept Mr. Miller as the arbitrator because he may naturally feel favoritism toward claimants in arbitrations since he is a member of a securities industry claimants' organization that represents the interests of public customers like the Clemmons' in this case.

Additionally, the Claimants' counsel in this case, Mr. Berkowitz, revealed during the May 8th Pre-Hearing Teleconference that he "know[s] John personally from PIABA conferences." Several times during the Pre-Hearing Teleconference, Mr. Berkowitz addressed Mr. Miller by his first name (*John*), which indicates that Arbitrator Miller is personally acquainted with the Claimants' counsel in this case. To me, this warrants the necessity of a further disclosure.

This decision to request the Arbitrator's removal is not made lightly or easily. But failing to reject Mr. Miller would be tantamount to a criminal defendant not rejecting a career prosecutor to sit as a juror over that defendant's case, especially when he is personally acquainted with the prosecutor of defendant's case. Equally analogous would be if a corporate insurance defendant failed to reject an active member of the plaintiffs' trial lawyer association or consumer attorneys association to sit as a juror on their cases.

Mr. Miller cannot serve as the sole arbitrator to decide this case of a public investor against QUEST CAPITAL when he in fact advocates the interests of public investors in suing securities firms like QUEST CAPITAL, and he is personally acquainted with the Claimants' lawyer.

Therefore, under authority of NASD Code of Arbitration § 10308, as amended by NASD Notice to Members 01-13, QUEST CAPITAL is requesting the removal of Mr. Miller from the Panel:

"After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed."

NASD Code of Arbitration § 10312(a) requires each arbitrator to disclose "any circumstances which might preclude such arbitrator from rendering an objective and impartial determination."

According to NASD Code of Arbitration § 10312(a)(1), this includes:

"any circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias."

Accordingly, QUEST CAPITAL respectfully requests pursuant to NASD Code of Arbitration § 10313 that the Director of Arbitration consider Mr. Miller as being technically "disqualified," and that he be removed from the Panel.

/ / /

July 16, 2001
Page 4

Kindly understand that I cast no aspersions over Mr. Miller, and I found him to be extremely professional, diligent and conscientious. I only point out the obvious preference an active member of an investors' advocacy group would have against brokers or securities firms that are in the position of QUEST CAPITAL in this case.

Respectfully Submitted,


POINTS & AUTHORITIES, et al.

RICHARD C. PALI
Arbitration Representative
on behalf of QUEST CAPITAL

ARBITRATOR DISCLOSURE REPORT

Arbitrator information last amended on 1/29/2001

ARBITRATOR

Arb ID

A11802

Arbitrator Name

Mr. John J. Miller Esq.

Industry/Public

Public Arbitrator

SKILLS IN CONTROVERSY

Account Related - Failure to Supervise
 Account Related-Breach of Contract
 Account Related-Errors-charges
 Account Related-Margin Calls
 Account Related-Negligence
 Employment - Compensation
 Employment - Promissory Notes
 Fraudulent Activity - Omission of Facts
 Fraudulent Activity-Brch of Fiduciary Dt
 Fraudulent Activity-Churning
 Fraudulent Activity-Manipulation
 Fraudulent Activity-Misrepresentation
 Fraudulent Activity-Suitability
 Fraudulent Activity-Unauthorized Trading
 Other-Clearing Disputes

SKILLS IN SECURITIES

< No Skills Listed >

EMPLOYMENT/EDUCATION

<u>Begin Date</u>	<u>End Date</u>	<u>Type</u>	<u>Firm/School</u>	<u>Position/Degree</u>
1/1/1981	1/1/1984	Education	University of Missouri	JD
1/1/1977	1/1/1981	Education	University of Missouri	AB.BJ
1/1/1996		Employment	Self- employed	Attorney
1/1/1994	1/1/1996	Employment	Nygaard & Miller	Partner
1/1/1991	1/1/1994	Employment	Nygaard & Associates	Associate Attorney
1/1/1986	1/1/1991	Employment	Stinson, Mag & Fizzell	Associate Attorney
1/1/1984	1/1/1986	Employment	United States District Court	Law Clerk

TRAINING

<u>Begin Date</u>	<u>End Date</u>	<u>Description</u>	<u>Firm/School</u>	<u>Certification</u>
10/1/1992	10/1/1992	Intro Securities Arbitrator Training	Arb. Trng. Seminar -	2 hrs.
6/24/1997		New Chairperson Training [NASD]	NASD Chairperson Tra	3 Hours. KCT
6/13/2000	6/13/2000	New Chairperson Training [NASD]	NASD Chairperson Training	11 hours - KCT

DISCLOSURE/CONFLICT INFORMATION

<u>Type/Sub-Type</u>	<u>Description</u>
Has published	The Journal of Dispute Resolution 1984
Member of Bar Association	Eighth, Tenth and Eleventh Circuits
Member of Bar Association	Kansas Association
Member of Bar Association	Missouri Association
Member of Bar Association	State and Federal Courts

PUBLICLY AVAILABLE AWARDS

<u>Case ID</u>	<u>Case Name</u>	<u>Closed Date</u>
99-05171	Michael C. Dukeshier & Jennifer J. Dukeshier JTWROS vs. Ameritrade.	8/15/2000

98-02625

Bernadette S Heyer vs. Texas Capital Securities, Kenneth B. Karpf, Mike

12/21/1999

ARBITRATOR BACKGROUND INFORMATION

I obtained degrees in Journalism and Economics from the University of Missouri, Columbia in May 1981. In May, 1984 I received my Law degree from the University of Missouri, Columbia. In Law School, I was the Editor in Chief of the Missouri Law Review and the Journal of Dispute Resolution. I served as a law clerk for United States District Court Judge Joseph E. Stevens Jr.

From 1984 to 1986, From 1986 to 1991, I was an attorney with the law firm of Stinson Mag & Fizzell, Kansas City, Missouri, practicing in commercial litigation.

From 1991 to 1996, I was an associate with the firm of Nygaard & Associates, and then a partner with the Nygaard & Miller Law Firm, practicing in securities, commercial, and employment litigation. I have been a sole practitioner since 1996, continuing my practice in the same areas. I am a commercial and securities arbitrator for the AAA.

MM98 SXP

CHAIRPERSON QUALIFICATIONS FOR STATUTORY EMPLOYMENT DISCRIMINATION CASES

I served as a law clerk for Federal District Judge Joseph E. Stevens, Jr. From 1984 to 1986. I worked for the Stinson, Mag & Fizzell law firm from 1986 to 1991, and I practiced with Diane Nygaard, as an associate and then partner, from 1991 to 1996. I have had my own practice since 1996. I am a member of the Kansas and Missouri bars, the US District Courts for the Western District of Missouri and the District of Kansas, and the US Court of Appeal for the Eighth, Tenth, and Eleventh Circuits. I have been an arbitrator for the NASD and the AAA (Commercial and Securities) since 1992. I practice in the areas of securities litigation and arbitration, employment litigation, and commercial litigation.

With respect to employment law, I have represented management and employees in contract negotiations, and I have represented both plaintiffs and defendants in contract litigation and in statutory discrimination disputes, both administratively and in court. I have also done a lesser amount of work in union and similar labor-related matters.

Recorded 1/19/00 js

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MEMORANDUM
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IN SUPPORT OF YOUR
LAW CLERK NEEDS

To: MR. EDWARD T. ANDERSON, Esq. C. 312-230-9239
From: RICHARD PAVI @ 818-225-8580
Re: CUMMONS vs QUEST CAPITAL - NASD # 00-04454
No. of pages including this: 2

2/19/01

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

THE ORIGINAL IS _____ IS NOT ☒ BEING FORWARDED BY MAIL.

COMMENTS: DEAR MR. ANDERSON -
ATTACHED PLEASE FIND THE "ARBITRATOR RANKING FORM"
ON THE CUMMONS MATTER. ALSO, PLEASE LET ME KNOW
IF THE NASD WILL BE MAKING AN ADMINISTRATIVE DECISION
ON QUEST's MOTION TO DISMISS BEFORE AN ARBITRATOR IS
SELECTED. I WOULD PREFER A DECISION BY THE NASD
~~RATHER~~ THAN BY AN ARBITRATOR. THANK YOU, R.P.

If you have any problem with the transmission of this information,
please telephone our office.

ARBITRATOR RANKING FORM

Case ID: 00-04454

Case Name: Ruth Clemmons and Paul Clemmons v. Quest Capital Strategies, Inc. and Matthew Mikesch

Public Arbitrator	Arbitrator ID	Panelist Name	Party Ranking/Struck
	A11802	Mr. John J. Miller Esq.	<u>1</u>
	A17716	Mrs. Marcella R. Bentley-Salmon	STRIKE
	A14294	Mr. Bill J. Alexander	STRIKE
	A15535	Mr. Eric T. Williams Esq.	STRIKE
	A13403	Ms. Patricia W. Bottoms	<u>2</u>

Claimant/Respondent:

Submitted By:

RICHARD PALI

(Please Print Name)

on behalf of:

*

QUEST CAPITAL STRATEGIES, INC.

Signed:

R Pali

* MADE WITHOUT WAIVER OF RESPONDENT QUEST CAPITAL STRATEGIES, INC.'S SUBJECT-MATTER JURISDICTION CHALLENGE AND MOTION FILED WITH THE NASD ON 1/18/01.

April 19, 2001

Richard C. Pali, Esq.
Points & Authorities
23161 Ventura Boulevard
Suite 101
Woodland Hills, CA 91364

Subject: NASD-DR Arbitration Number 00-04454
Ruth Clemmons and Paul Clemmons v. Quest Capital Strategies, Inc. and Matthew
Mikesch

Dear Mr. Pali:

Arbitrator John J. Miller, Esq. discloses that:

< Please see attached >

The arbitrator affirmatively states that the foregoing facts will not affect his/her ability to be fair and impartial in the decision of this matter. In the interest of full disclosure, the arbitrator wishes to inform the parties of these facts.

Very truly yours,



Edward T. Anderson, Esq.
Senior Attorney
312-899-4440

ETA:EIH:LC54H

wnb:7/00

RECIPIENTS:

Stuart R. Berkowitz, Esq., Ruth and Paul Clemmons
Platke and Berkowitz, L.L.P., 520 North Skinker, St. Louis, MO 63130

Matthew A. Mikesch
2603 Beechwood, St. Joseph, MO 66210

Richard C. Pali, Esq., Quest Capital Strategies, Inc.
Points & Authorities, 23161 Ventura Boulevard, Suite 101, Woodland Hills,

ARBITRATOR DISCLOSURE CHECKLIST

00-4454 John Miller

The Arbitrator Disclosure Checklist is sent to the arbitrator's as part of the Oath of Arbitrator. It not only provides a reminder to the arbitrators to consider all possible disclosures, but also requires a complete explanation of any possible conflict to the parties.

Please indicate your response to each of the questions listed below by checking the appropriate box.
Please check "yes" or "no" to each question. Provide a full explanation to any question(s) to which you provided a "yes" response. All affirmative responses and explanations will be sent to the parties.

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. Do you presently represent any person in a proceeding adverse to any party to the arbitration? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Have you represented any other person against any party to the arbitration in the past five years? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Have you been retained to assist any party as an expert or otherwise in a proceeding involving any party to the arbitration in the last five years? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Have you had any professional or social relationships with counsel for any party in this proceeding or the firm for whom they work? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Have you had any professional or social relationships with any party in this proceeding or the firm for whom they work? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Have you had any professional or social relationships with any relative of any party, counsel, or identified witness in this proceeding? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Have you ever served as an arbitrator in a proceeding in which any of the identified witnesses or named parties gave testimony? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. Have you or any member of your family maintained an account individually, jointly or beneficially with a brokerage firm named in this proceeding? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Have you ever, as a party to an arbitration or litigation, named a brokerage firm, or been named by a brokerage firm in any civil law suit or arbitration proceeding? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. Have you ever been named as a party by an investor in any civil lawsuit or arbitration proceeding? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

11. Are you a member of any securities-related organization (e.g., Securities Industry Association) or organization of claimants or attorneys who periodically represent investors in suits against brokerage firms (e.g., Public Investors Arbitration Bar Association)? ☒ []
12. Have any of your relatives named a brokerage firm, or been named by a brokerage firm, in any civil lawsuit or arbitration? [] ☒
13. Have you or a member of your immediate family invested in or held any of the securities that are subject of this dispute during the time periods in question? [] ☒
14. Have you, any member of your immediate family, close social or business associate, been involved in the last five years in a dispute involving the same subject matter as contained in the case to which you are assigned? [] ☒
15. Has any member of your immediate family or household been employed by a brokerage firm? [] ☒
16. Have you had any social or professional relationship with any other arbitrator assigned to this case? [] ☒
17. Has your conduct been an issue in an arbitration or litigation proceeding (other than a proceeding in which you served as an arbitrator)? For example, if your conduct as a registered representative or manager was an issue in a case, but only the broker-dealer was named as a party, your response should be "yes." [] ☒
18. Do you have any disclosures on your record with the Central Registration Depository ("CRD")¹ which are not reflected on your disclosure report? [] ☒

Please attach additional sheet(s) to explain and clarify any "yes" answers to the above questions.

11. I am a member of the Public
Investor Arbitration Bar Association.

¹ CRD is an automated, electronic web system, which NASD Regulation, Inc. uses to maintain the qualification, employment and disclosure histories of member firms' registered securities employees.



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Mr. Edward T. Anderson, Esq.
Senior Attorney
NASD Regulation, Inc.
Office of Dispute Resolution
10 S. LaSalle Street, Suite 1110
Chicago, Illinois 60603-1002

May 3, 2001

VIA FAX (312-236-9239)

Re: NASD-DR Case No. 00-04454
RUTH CLEMMONS and PAUL CLEMMONS vs. QUEST CAPITAL
STRATEGIES, INC.; and MATTHEW MIKESCH.

Dear Mr. Anderson:

As you may already know, this office is the arbitration representative for Respondent QUEST CAPITAL STRATEGIES, INC. ("QUEST CAPITAL") in this case. This letter responds to your letters dated March 29, 2001 and April 19, 2001.

April 19, 2001:

This correspondence raises a troubling issue - the possibility of bias on the part of the selected arbitrator. As Mr. Miller recently revealed, he is a member of the Public Investors Arbitration Bar Association. Mr. Miller's "Arbitrator Disclosure Report" transmitted to the parties on January 29, 2001 fails to disclose this fact.

Had this been listed on Mr. Miller's background, I never would have ranked him as my #1 choice on the "Arbitrator Ranking Form" that I faxed to you on February 19, 2001. Now, I can no longer accept Mr. Miller because it seems clear that he will have favoritism toward Claimant's cases since he is a member of a securities industry

May 3, 2001
Page 2

claimants' organization that represents the interests of public customers like the Clemmons' in this case.

This decision is not made lightly. But failing to reject Mr. Miller would be tantamount to a criminal defendant not rejecting a career prosecutor to sit as a juror over that defendant's case, or a corporate insurance defendant not rejecting an active member of the plaintiffs' trial lawyer association or consumer attorneys association to sit as a juror on their cases.

Kindly understand that I cast no aspersions over Mr. Miller. I only point out the obvious preference an active member of an investors' advocacy group would have against brokers or securities firms like QUEST CAPITAL.

Mr. Miller cannot serve as the sole arbitrator to decide this case of a public investor against QUEST CAPITAL when he in fact advocates the interests of public investors in suing securities firms like QUEST CAPITAL.

The only other eligible arbitrator remaining on the list is Ms. Patricia W. Bottoms. She was my #2 pick on the "Ranking Form."

March 29, 2001:

In your March 19th letter you attach a copy of the "Certification of Arbitrators' Exhibits." I do not believe that the list is accurate. QUEST CAPITAL is identified under "Respondent #2," but the "Motion to Dismiss for Lack of Subject-Matter Jurisdiction" that QUEST filed on January 18, 2001 is not listed under "Motions ... for the panel." Please provide QUEST's "Motion to Dismiss" to the arbitrator in advance of the scheduled Pre-Hearing Teleconference of May 8, 2001.

Along that point, QUEST's Motion to Dismiss was filed with the NASD prior to the selection of the arbitrator. Please let me know if, on behalf of the Director of Arbitration, you are intending to make an administrative decision on QUEST's Motion to Dismiss the Statement of Claim before the Pre-Hearing Teleconference, or whether the NASD has decided to defer this decision to the arbitrator.

Please understand our position that QUEST CAPITAL respectfully requests that the NASD Dispute Resolution office *decline to exert jurisdiction* over QUEST CAPITAL in this matter because (1) the Claimants were never at any time customers of QUEST CAPITAL, (2) Claimants never at any time signed any arbitration agreement with

May 3, 2001
Page 3

QUEST CAPITAL, and (3) Claimants never at any time purchased securities in connection with or offered by QUEST CAPITAL.

Additionally, I never received a copy of Respondent Mikesch's Statement of Answer. I would greatly appreciate it if you could fax it to me.

Please do not hesitate to contact me should there be any additional information required, or if the Office of Dispute Resolution or Director of Arbitration has any question or comments. I appreciate your consideration to this matter.

Respectfully Submitted,
POINTS & AUTHORITIES, et al.

A handwritten signature in black ink, appearing to read 'R. Pali', is written over the typed name.

RICHARD C. PALI
on behalf of QUEST CAPITAL
STRATEGIES, INC.



NASD
DISPUTE RESOLUTION

An NASD Company

ASD Dispute Resolution, Inc.

150 S. LaSalle Street * Suite 1110 * Chicago, IL 60603-1002 * 312-899-4440 * Fax 312-236-9239

July 2, 2001

Richard C. Pali, Esq.
Points & Authorities
23161 Ventura Boulevard
Suite 101
Woodland Hills, CA 91364

Subject: NASD-DR Arbitration Number 00-04454
Ruth Clemmons and Paul Clemmons v. Quest Capital Strategies, Inc. and Matthew Mikesch

Dear Mr. Pali:

This will respond to your letter dated June 14, 2001. Mr. Miller did advise the NASD of his decision on Quest Capital's Challenge based upon his membership in PIABA by letter dated May 8, 2001. A copy of that letter was transmitted via U.S. Mail on May 10, 2001 with the Scheduling Order entered in this matter. I have enclosed a copy of Mr. Miller's letter since it appears that you had either misplaced the earlier copy or one was inadvertently omitted from your copy of the May 10, 2001 correspondence to the parties.

Very truly yours,

Edward T. Anderson, Esq.
Senior Attorney
312-899-4440

ETA:ETA:LC53A
rc:01/01

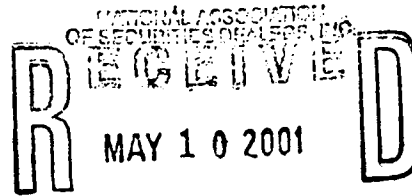
RECIPIENTS:

Stuart R. Berkowitz, Esq., Ruth and Paul Clemmons
Platke and Berkowitz, L.L.P., 520 North Skinker, St. Louis, MO 63130

Matthew A. Mikesch
2603 Beechwood, St. Joseph, MO 66210

Richard C. Pali, Esq., Quest Capital Strategies, Inc.
Points & Authorities, 23161 Ventura Boulevard, Suite 101, Woodland Hills.

Law Offices of
JOHN J. MILLER, P.A.
Admitted in Kansas and Missouri



May 8, 2001

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Edward T. Anderson
NASD
10 S. LaSalle Street, Suite 1110
Chicago, IL 60603-1002

Re: Clemmons v. Quest, et al., No. 00-04454

Dear Ed:

Enclosed is the Initial Prehearing Conference scheduling order. After consideration, I have declined Respondent Quest Capital Strategies' request that I voluntarily withdraw from the panel.

Yours sincerely,

John J. Miller

Enclosure

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of LOS ANGELES, STATE OF CALIFORNIA. My business address is: 23161 Ventura Boulevard, Suite 101, Woodland Hills, California 91364. I am over the age of 18 years and am not a party in this action.

I am readily familiar with the practice of this business for collection and processing of correspondence, pleadings, and other matters for mailing with the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage thereon fully prepaid in Woodland Hills, California on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On July 16, 2001 I served the foregoing document(s) entitled:

**PETITION TO THE DIRECTOR TO INTERVENE AND REMOVE ARBITRATOR
FOR POSSIBLE BIAS**

on ALL INTERESTED PARTIES in this action by inserting copies thereof in a sealed envelope and placing it for collection by the U.S. Postal Service first class mail, addressed to:

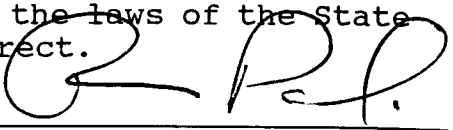
Mr. George H. Friedman
Director of Arbitration
NASD Regulation, Inc.
Office of Dispute Resolution
125 Broad Street, 36th Floor
New York, New York 10004

Mr. Edward T. Anderson, Esq.
Senior Attorney
NASD Regulation, Inc.
Office of Dispute Resolution
10 S. LaSalle St. Suite 1110
Chicago, Illinois 60603-1002

Mr. Stuart R. Berkowitz
PLATKE & BERKOWITZ, L.L.P.
520 North Skinker
St. Louis, Missouri 63130

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

7/16/01
Date


Name